customs, and thoughts of the people" will not be enforced; but does it follow that it is the agreement with these habits and customs which "*makes it law*"? Again, in regard to Mr. Carter's treatment of the "universal and necessary maxim that every one is presumed to know the law," which he regards as inconsistent with Austin's conception of law, the objection suggests itself which has been expressed by Maule J. in *Martindale* v. *Falkner*,[1] that the maxim *ignorantia juris non excusat* is incorrectly expressed when put in the form of a presumption. The characterization of Bentham "as most accurately described by the vulgar designation of crank" has attracted some criticism which seems not undeserved. For if it be admitted that Bentham was a "crank," he was a great deal more than that, — he was one who has powerfully affected the development of the law.

It may be observed that criticisms of Bentham's and Austin's theory of law similar in their nature to Mr. Carter's are to be found in Sir Henry Maine's writings.

RECENT CASES.

[These cases are selected from the current English and American decisions not yet regularly reported, for the purpose of giving the latest and most progressive work of the courts. No pains are spared in selecting *all* the cases, comparatively few in number, which disclose the general progress and tendencies of the law. When such cases are particularly suggestive, comments and references are added, if practicable.]

BILLS AND NOTES — PAYMENT. — Where the drawer of a check has no funds on deposit with the drawee for its payment, the payee need not present the check for payment before suing on the original demand, even if it can be proved that the drawee would have paid the check if presented. *Culver* v. *Marks*, 23 N. E. Rep. 1086 (Ind).

BILLS AND NOTES — TWO JUDGMENTS. — Recovery of judgment on a contract by the maker of a note to procure an indorser is no bar to an action on the note although the damages on the contract were assessed at the amount due on the note. *Vanuxem* v. *Burr*, 24 N. E. Rep. 773 (Mass.).

CONSTITUTIONAL LAW — DUE PROCESS OF LAW. — A Minnesota statute empowers the railroad and warehouse commission of that State to compel a common carrier to adopt such charges as the commission "shall declare to be equal and reasonable." There is no provision for a hearing before the commission, and the Supreme Court of Minnesota declared that the statute made its decision final and conclusive as to what are "equal and reasonable" charges. The statute was *held* unconstitutional. The commission cannot be regarded as a court of justice, and since no appeal from its decision is allowed, the statute would deprive the carriers of their property "without due process of law." Bradley, Gray, and Lamar, JJ., dissenting. *Chicago, M., & St. P. Ry. Co.* v. *State of Minnesota*, 10 Sup. Ct. Rep. 462.

CONSTITUTIONAL LAW — HABEAS CORPUS. — An act of Congress gives the Circuit Courts power to issue writs of *habeas corpus* on the petition of a person alleged to be in custody "for an act done or omitted in pursuance of a law of the United States." *Held*, that the word "law" is there used in the broad sense, and includes any duty of a United States officer which can be inferred from the general scope of his duties.

The Constitution declares that the President "shall take care that the laws be faithfully executed. *Held*, that he can direct a United States marshall to accompany and protect from a threatened assault a justice of the Supreme Court while in the discharge of his official duties.

On both these points Fuller, C. J., and Lamar, J., dissented. *Cunningham* v. *Neagle*, 10 Sup. Ct. Rep. 658.

[1] "There is no presumption in this country that every person knows the law; it would be contrary to common sense and reason if it were so." *Martindale* v. *Falkner*, 2 C. B. 719; and see 3 Harv. L. Rev. 165.

CONSTITUTIONAL LAW — INTERSTATE COMMERCE — MEAT INSPECTION LAW. — A Minnesota statute prohibits the sale of dressed meat within any municipal division of the State, unless the animal was inspected there within twenty-four hours before it was slaughtered. *Held*, unconstitutional, as it, in effect, prohibits the importation of meats slaughtered in other States. This violates both the clause of the Constitution giving Congress the power to regulate commerce and the one declaring that the citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States. *State of Minn.* v. *Barber*, 10 Sup. Ct. Rep. 862.

CONSTITUTIONAL LAW — INTERSTATE COMMERCE — ORIGINAL PACKAGES. — An Iowa statute forbade the sale of intoxicating liquors within the State except in certain specified cases. *Held*, unconstitutional, in so far as the statute prohibited the sale of liquors by a foreign non-resident importer in the packages in which they were brought from another State. Such a provision encroaches upon the power of Congress over interstate commerce, for this power does not stop at the boundary of the State, but can follow the article imported until it becomes mingled with the common mass of property within the State.

This statute is more than a police regulation. The importation of liquors from one State into another admits of uniform treatment throughout the country. Therefore it is not a matter of a purely internal nature, and the silence of Congress upon the subject amounts to a declaration that such importation shall be free. Gray, Harlan, and Brewer, JJ., dissenting. *Leisy* v. *Hardin*, 10 Sup. Ct. Rep. 681. See *Lyng* v. *Michigan*, 10 Sup. Ct. Rep. 725, *accord.*

CONSTITUTIONAL LAW — POWER OF CONGRESS OVER THE TERRITORIES. — An act of Congress declared void the charter of the Church of Jesus Christ of Latter-Day Saints which had been granted by the Legislature of Utah. *Held*, that this was a valid exercise of the supreme legislative power which Congress possesses over the Territories of the United States. Upon the dissolution of this religious corporation, its personal property became vested in the government of the United States, to be applied under the doctrine of *cy pres* to some kindred object. Fuller, C. J., and Field and Lamar, JJ., dissenting. *Late Corporation of the Church of Jesus Christ of Latter-Day Saints* v. *United States*, 10 Sup. Ct. Rep. 792.

CONTRACTS — FRAUD — PURCHASER FOR VALUE. — An individual obtained, by bribing members of the city council, a contract to furnish the city with hydrants. His assignee in good faith and for value supplied the hydrants. *Held*, that the city could not repudiate its agreement as against such innocent purchaser. *Burlington Water Works Co.* v. *City of Burlington*, 23 Pac. Rep. 1068 (Kan.).

CONTRIBUTORY NEGLIGENCE — IMPUTABILITY OF PARENT'S NEGLIGENCE TO CHILD. — The negligence of a parent cannot be imputed to a child, so as to bar an action by the latter for the wrongful act of another. *Chicago City Ry. Co.* v. *Wilcox*, 24 N. E. Rep. 419 (Ill.).

Illinois has generally been counted as following the so-called "New York rule" of *Hartfield* v. *Roper* upon the subject. See 1 Shearman & Redfield on Negligence, 4th ed., § 74, note 6. The court, in now adopting the "Vermont rule," of non-imputability (*Robinson* v. *Cone*, 22 Vt. 213), professes to correct those authors, and to distinguish the cases cited by them as follows: "In these cases the action was by an administrator for the benefit of the parents as next of kin. These cases are so clearly distinguishable from those in which the child himself sues, that they must have been cited by mistake." This same court, in *Holton* v. *Daly*, 106 Ill. 131, 1882, declared that this statutory action by the administrator for the benefit of the next of kin was simply a continuation of the right of action which would have accrued to the deceased himself had he survived the injury. To reconcile these decisions, and bring the cases attempted to be distinguished under the rule which forbids an action by the negligent parent for loss of service, it would seem that it ought to appear *affirmatively* that in the cases in question the negligent parents were the only next of kin to be benefited by the action. So far from this being the case, in some of them the negligent parent was killed in the same accident as the child. Considering, however, that in the large majority of cases the parents will reap the entire benefit, the distinction here laid down may not, as a piece of *rusticum judicium*, be so very objectionable.

EQUITY JURISDICTION — NUISANCE — ELECTRIC RAILWAYS. — In the present state of electrical science, a telephone company cannot enjoin the operation of an

electric railway on account of the serious injury to their business caused by the escape of electricity from its rails. *Cumberland Telephone Co.* v. *United Electric R. Co.*, 42 Fed. Rep. 273.

INSOLVENCY — AFTER-ACQUIRED PROPERTY. — Transactions of an undischarged bankrupt in respect to after-acquired property with a person acting *bona fide* and for value, whether with or without knowledge of the bankruptcy, are valid against the trustee until he intervenes. *Cohen* v. *Mitchell*, 25 Q. B. Div. 262 (Eng.).

INSOLVENCY — RIGHTS OF CREDITORS. — A creditor of an insolvent estate can prove and receive a dividend on the full amount of his debt irrespective of any collateral securities he may hold. *In re Iion Nat. Bank*, 24 N. E. Rep. 793 (N. Y.). See also *In re Souther*, 2 Lowell, 320, and 1 Ames, Cases on Bills and Notes, 880, note.

INSURANCE — RIGHT OF BENEFICIARY IN SUBSTITUTED POLICY. — A wife named as beneficiary in an insurance policy acquires a right therein which cannot be defeated by a surrender thereof and substitution of a new policy without her consent. *Putnam* v. *New York Life Ins. Co.*, 7 So. Rep. 602 (La.).

PROPERTY — CONFUSION — INTENTION OF TORTIOUS TAKER. — Where the defendant tortiously mixes his goods with those of the plaintiff so that they cannot be distinguished and each owner given his identical property, the goods being of unequal value, the plaintiff will not be entitled to the whole mixture unless the defendant acted fraudulently, wilfully, or with some improper motive or purpose. *Claflin* v. *Continental Jersey Works*, 11 S. E. Rep. 721 (Ga.).

PROPERTY — GIFT INTER VIVOS. — A gift *inter vivos* is not complete without delivery. *Cochrane* v. *Moore*, 25 Q. B. Div. 57 (Eng.). This case follows *Irons* v. *Smallpiece*, 2 B. & Ald. 551, lately so often doubted.

QUASI CONTRACTS — WAIVER OF TORT — ELECTION OF REMEDIES. — Three persons were concerned in the conversion of the plaintiff's goods. He brought an action for goods sold and delivered, and recovered judgment against two of them, and then brought this action for conversion against the third. *Held*, that by beginning an action for goods sold, the plaintiffs passed the title to the property. They gave up to the wrong-doers all their interest in the specific goods and relied on their right to payment. Therefore the defendant can defeat this action for conversion by showing the former judgment, although he was not a party to it; for the passing of the title is absolute, and any one can show it. *Terry* v. *Munger*, 24 N. E. Rep. 272 (N. Y.).

REAL PROPERTY — DEDICATION — RIGHTS OF REVERTER IN BURYING-GROUND. — The donor of land dedicated to a city for a grave-yard has a right of reverter therein upon abandonment for this purpose, and use as a public park. The doctrine of *cy pres* is inapplicable to such a case. *Campbell et al.* v. *City of Kansas*, 13 S. W. Rep. 897 (Mo.).

REAL PROPERTY — ESTOPPEL IN PAIS. — Where A., the owner of a strip of land along the highway, stood by in silence knowing that B. was making valuable improvements on his adjoining tract, which improvements could not be enjoyed without the strip of A.'s land, and knowing that B. was acting in the erroneous belief that such strip was his, *held*, that A. was estopped to set up his title, and would be perpetually enjoined. *Sumner* v. *Seaton*, 19 Atl. Rep. 884 (N. J.).

REAL PROPERTY — FORCIBLE ENTRY. — The owner of land making a forcible entry upon his own land, the land being in the actual possession of another who is not a recent trespasser or intruder, will be liable to the latter for the entry in an action of trespass *q. c. f.* *Mosseller* v. *Deaver*, 11 S. E. Rep. 529 (N. C.).

REAL PROPERTY — INCREASE OF EASEMENT — CONSTITUTIONAL LAW — TAKING OF PROPERTY. — Where the fee of a highway is in the original owner of the soil, the public having acquired a right of way only, a telegraph company has no right to use the highway for erecting and maintaining a telegraph line without compensating the owner of the fee, although authorized to do so by statute, — such statute being unconstitutional. *Western Union Tel. Co.* v. *Williams*, 11 S. E. Rep. 106 (Va.).

See *Pierce* v. *Drew*, 136 Mass. 75, and *Julia Building Ass.* v. *Bell Tel. Co.*, 88 Mo. 258, *contra*.

REAL PROPERTY — WAY OF NECESSITY. — The defendant had a right of way of necessity over the plaintiff's land to a highway. The highway was subsequently discontinued. *Held*, that the defendant had no right to pass over a part of the discontinued highway belonging to the plaintiff in order to reach another highway, even although there was no other way to get out of his land. *Morse* v. *Benson*, 24 N. E. Rep. 675 (Mass.).

RES ADJUDICATA — FOREIGN JUDGMENTS. — The defendants obtained a judgment against the plaintiffs in France, and brought an action on the judgment here. The plaintiffs brought a bill for discovery in aid of their defence, and the defendants in a plea set up the French judgment. *Held*, that a judgment rendered in a court of a civilized country having jurisdiction of the subject-matter in an action in which the defendant, a citizen of the United States, appeared and defended, cannot be impeached when sued on here, though the defendant was denied the benefit of our rules of evidence and procedure, and though the judgment was based on false testimony and was erroneous. *Hilton* v. *Guyott*, 42 Fed. Rep. 249. See also *McMullen* v. *Richie*, 41 Fed. Rep. 502.

SALE — RESCISSION OF CONTRACT — FRAUDULENT REPRESENTATION TO MERCANTILE AGENCY. — A party selling goods to an insolvent firm on the strength of a false representation by such firm to a mercantile agency as to its financial condition, may rescind the sale and recover the goods. *Gainesville Nat. Bank et al.* v. *Bamberger et al.*, 13 S. W. Rep. 959 (Tex.).

STATUTE OF FRAUDS — AGREEMENT NOT TO BE PERFORMED WITHIN A YEAR. — A promise to support a child fifteen years old until he becomes of age, is not an agreement "not to be performed within a year" within the meaning of the Statute of Frauds, since such promise might be fully performed within a year if the child should die within that time. *Woolbridge* v. *Stern*, 42 Fed. Rep. 311.

STATUTES — EXAMINATION OF JOURNALS. — Although an apparent statute has the signatures of the presiding officers of the House and Senate, and of the Governor, the courts will declare it void if they find from an examination of the journals of the Houses that it never in fact passed the Legislature. *Rode* v. *Phelps*, 45 N. W. Rep. 493 (Mich.).

TELEGRAPH — DELIVERY OF TELEGRAM. — A message was delivered to a telegraph company, addressed to "A. B., care of C. D., Fort Scott, Kansas." The latter refused to receive the telegram. *Held*, that an instruction to the effect that if C. D. gave the company's messenger such instructions as would enable him with ordinary diligence to find the addressee, then it devolved upon the company to deliver the message as instructed was erroneous, as imposing too great a duty upon the telegraph company. *Western Union Tel. Co.* v. *Young*, 13 S. W. Rep. 985 (Tex.). In *Pope* v. *W. U. Tel. Co.*, 9 Brad. (Ill. App.), an instruction that the company was bound only to deliver the telegram at the office address given, was held erroneous, as being too great a limitation on the duty of the company. See also Gray, Communication by Telegraph, § 23.

TORT — DEATH BY WRONGFUL ACT — ACTIONS. — Where statutes provide for the survival of certain delictual actions to the executor or administrator of the deceased, and also give an action to the personal representative for the benefit of the widow or next of kin, the personal representative may recover substantial damages in *two* actions, one under each statute. *Davis* v. *St. Louis, I. M., & S. Ry. Co.*, 13 S. W. Rep. 801 (Ark.). This case follows *Needham* v. *Ry. Co.*, 38 Vt. 294. For a discussion of cases reaching contrary results in Maine, Illinois, and Kansas, see 28 Am. L. Reg. 385, 513.

REVIEWS.

HISTORY OF THE COURT OF CHANCERY AND OF THE RISE AND DEVELOPMENT OF THE DOCTRINES OF EQUITY. By A. H. Marsh, Q. C. Toronto; Carswell & Co., 1890. 8vo. Pages 140.

The author is the Equity Lecturer to the Law School in connection with the Law Society of Upper Canada, and to this fact this book owes its existence. It is written in a lively and forcible style, and